

1 Having heard the testimony, having examined the exhibits and
2 having considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
6 certified copy of its Regulation I and amendments thereto, which are
7 noticed.

8 II

9 On April 2, 1980, at about 8:05 a.m., respondent's inspector
10 noticed a black plume rising from appellant's plant located in
11 Everett, Washington. The plume was emanating from boiler stack
12 no. 1. The wind direction was primarily from the north. The sky was
13 blue and it was clear. The inspector positioned himself southeast of
14 the stack at a distance of about one-quarter mile to observe the
15 plume. The inspector recorded opacities ranging from 30 percent to 40
16 percent for seven and one half minutes within a fifteen minute
17 period. After making his observation, the inspector called his office
18 to learn if an upset or breakdown event was reported. None had been
19 phoned in at 8:21 a.m. The inspector then visited appellant's plant.

20 III

21 After discussing the matter with an employee of appellant, the
22 inspector issued Notice of Violation No. 18783 at 8.59 a.m. On
23 April 20, 1982, respondent sent to appellant by certified mail a
24 Notice and Order of Civil Penalty No. 5468 of \$250 for the alleged
25

1 violation of section 9.03(b) of respondent's Regulation I. The Notice
2 and Order of Civil Penalty is the subject of the appeal.

3 IV

4 Section 9.03(b) of respondent's Regulation I makes it unlawful for
5 any person to cause or allow the emission of any air contaminant for a
6 period or periods aggregating more than three minutes in any one hour
7 which is:

- 8 (1) Darker in shade than that described as No.
9 1 (20% density) on the Ringelmann Chart, as published
10 by the United States Bureau of Mines; or
11 (2) Of such opacity as to obscure an observer's
view to a degree equal to or greater than does smoke
described in Subsection 9.03(b)(1).

12 V

13 Appellant's defense was that respondent's inspector had failed to
14 follow proper procedures in making his observations of the opacity of
the plume in the following respects:

- 15 (1) That the inspector did not position himself in such a way
16 that his line of vision was as near as possible approximately
17 perpendicular to the direction of the plume--the direction the wind
18 was blowing, as provided in U.S. Environmental Protection Agency
19 method 9.

- 20 (2) Even if such violation is provable, it is excusable under
21 respondent's Regulation I, section 9.16 pertaining to upset conditions.

22 VI

23 The inspector in his testimony and in his written report
24
25
26

1 consistently places his position while making his observations as
2 having been southeast of the plume.

3 The plume and wind direction, while the readings were being taken,
4 apparently varied and were never clearly established. The inspector's
5 written report (Exhibit R-7) stated that the wind direction was from
6 the north.

7 The plume and wind direction as drawn on the rough diagram
8 (Exhibit A-2) appears to be from the north when compared with the
9 compass direction "N" as depicted on the diagram.

10 VII

11 State of Washington Department of Ecology Source Test Method 9A is
12 similar to Source Test Method 9 of the U.S. Environmental Protection
13 Agency. The following are portions of Method 9A which are pertinent
14 to this matter:

15 The qualified observer shall stand at a distance
16 sufficient to provide a clear view of the emissions
17 with the sun oriented in the 140° sector of his
18 back. Consistent with maintaining the above
19 requirement, the observer shall, as much as possible,
20 make his observations from a position such that his
21 line of vision is approximately perpendicular to the
22 plume direction.

23

24 The observer shall record the name of the plant,
25 emission location, type of facility, observer's name
26 and affiliation, and the date on a field data sheet.
27 The time, estimated distance to the emission
location, approximate wind direction, estimated wind
speed, description of the sky condition (presence and
color of clouds), and plume background are recorded
on a field data sheet at the time opacity readings
are initiated and completed.

(Emphasis added.)

VIII

An employee of appellant noticed a possible upset condition in the mill's power boiler after he reported for work at approximately 7:30 a.m., on April 2, 1982. He immediately set about following troubleshooting procedures by taking an oxygen reading, and when that reading was normal, he calibrated the oxygen meter, which he also found to be normal. By 9:00 a.m., he was unable to ascertain the source of the problem, and thereupon contacted the supervisor. At approximately 9:30 a.m., the supervisor discovered that three excess air registers were open which could cause an incorrect distribution of oxygen. Those air registers were immediately closed and operations subsequently proceeded normal.

A report of these events was telephoned to respondent at approximately 8:52 a.m., April 2, 1982. At 8:59 a.m., April 2, 1982, respondent handed appellant Notice of Violation No. 18783.

IX

Appellant contends that it should be exculpated from its violation by section 9.16 of respondent's Regulation I which states:

Emissions exceeding any of the limits established by this Regulation as a direct result of start-ups, periodic shutdown, or unavoidable and unforeseeable failure or breakdown, or unavoidable and unforeseeable upset or breakdown of process equipment or control apparatus, shall not be deemed in violation provided the following requirements are met:

(1) The owner or operator of such process or equipment shall immediately notify the Agency of such occurrence, together with the pertinent facts relating thereto regarding nature of problem as well as time, date, duration and anticipated influence on emissions from the source.

1 (2) The owner or operator shall, upon the
2 request of the Control Officer, submit a full report
3 including the known causes and the preventive
4 measures to be taken to minimize or eliminate a
5 re-occurrence.

6 (Emphasis added)

7 X

8 Any Conclusion of Law which should be deemed a Finding of Fact is
9 hereby adopted as such.

10 From these Findings the Board enters these

11 CONCLUSIONS OF LAW

12 I

13 It appears that the inspector in making his observations southeast
14 of the plume (approximately 55°) did not substantially follow State
15 of Washington Department of Ecology Source Test Method 9A or Source
16 Test Method 9 of the U.S. Environmental Protection Agency. The sight
17 path through the plume was much longer than it would have been had he
18 placed himself approximately perpendicular or about 90° from the
19 plume direction. The longer the visual path through the plume, the
20 greater the plume opacity will appear to the observer.¹ It appears,
21 therefore, that the opacity readings obtained by the inspector may
22 well have been much greater than they would have been had he
23 substantially followed either of the recognized methods described
24 above

25 1. Guidelines for Evaluations of Visible Emissions - EPA 340/1-7007,
26 April 1975, U.S. Environmental Protection Agency, Section 7.2.

1 By deviating materially from the recognized procedures set forth
2 in method 9, without providing adequate explanation, respondent's
3 inspector failed to establish that he took reliable opacity readings.
4 Since the opacity readings are questionable, respondent failed to
5 establish that the emissions were of an opacity greater than allowed
6 by section 9.03(b) of Regulation I. Consequently, respondent failed
7 to meet its burden of proof.

8 II

9 Section 9.16 must be reasonably construed. "Immediately notify
10 the agency of such occurrence together with the pertinent facts
11 relating thereto regarding nature of problem" means that the
12 respondent must determine the "pertinent facts thereto " This
13 requires a certain amount of time.

14 The Board believes that this case the time from 7:30 a.m., when
15 appellant discovered the problem and 8:52 a.m., when appellant
16 telephoned PSAPCA and after the inspector was at the mill would not
17 constitute immediate notification of an upset condition under the
18 circumstances of this case.

19 III

20 The violation was not established by respondent by a preponderance
21 of the evidence. Accordingly, the \$250 civil penalty should be vacated.

22 IV

23 Appellant contends that respondent did not provide requested
24 information until three separate requests had been made. If that, in
25 fact is true then the Board suggests that respondent institute a

1 procedure so that all evidence connected with a violation be made
2 available to the appellant within a resonable time after the initial
3 request.

4 V

5 Any Finding of Fact which should be deemed a Conclusion of Law is
6 hereby adopted as such.

7 From these Conclusions the Board enters this

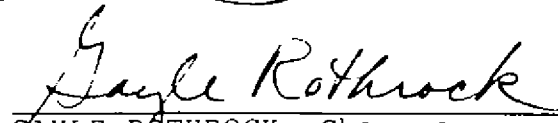
8 ORDER

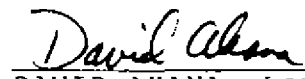
9 Order and Notice of Civil Penalty No. 5468 for \$250 issued to
10 Weyerhaeuser Company, Inc., in violation of respondent's Regulation I
11 is hereby vacated.

12 DONE at Lacey, Washington this 21 day of November, 1982.

13 POLLUTION CONTROL HEARINGS BOARD

14 
15 LAWRENCE J. FAULK, Member

16 
17 GAYLE ROTHROCK, Chairman
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19 
20 DAVID AKANA, Lawyer Member
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